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4 RUBEN MATUK,  
5 Plaintiff,  
6 v.  
7 MARTIN HOSHINO,  
8 Defendant.  
9

10 Case No. 13-cv-00204-JD  
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12 **ORDER RE HABEAS PETITION**  
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14 Re: Dkt. No. 1  
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16 Petitioner Ruben Jacob Matuk, a California state prisoner currently in custody at LaPalma  
17 Correctional Center in Eloy, Arizona, seeks federal habeas relief under 28 U.S.C. § 2254.  
18 Petitioner admitted guilt in a plea agreement to a lewd act upon a child, indecent exposure, oral  
19 copulation with a person under 18 years of age, and other similar counts. The state trial court  
20 imposed a sentence of eleven years and eight months in prison and denied probation.  
21

22 At the core of petitioner's habeas challenge is the claim that the probation report "asserted,  
23 entirely without foundation, that appellant was ineligible for probation, and that his conduct was  
24 'violent' and that he was 'a serious danger to society.'" Dkt. No. 1, Addendum at 3. Petitioner  
25 argues that "regardless of whether there is express reference to the misinformation by the  
26 sentencing court, . . . such reliance was probable," and he asks this Court to vacate his sentence on  
27 that basis. *Id.* at 5.

28 The Court has carefully considered the parties' written briefs and oral arguments at the  
hearing, the record and governing law, and grants the petition in part and denies it in part.

29 **BACKGROUND**  
30

31 The facts leading to petitioner's guilty plea, which are not disputed, are taken from the  
32 California Court of Appeal's opinion in *People v. Matuk*, No. H035921, 2011 WL 5040652 (Cal.

1 Ct. App. Oct. 24, 2011) (*see* Respondent's Exhibit B), and from the Court's review of the record  
2 in this case (Respondent's Exhibits A and D).

3 Petitioner is the son of a minister who "took advantage of his position . . . to prey upon  
4 four young girls in his father's congregation." *Matuk*, 2011 WL 5040652, at \*1. For seven years,  
5 between 2002 and 2009, petitioner "exposed his erect penis to his victims on multiple occasions";  
6 "masturbated in front of them, asked or 'told' them to touch his penis and 'jack him off"'; and  
7 "demanded that they orally copulate him." *Id.* Two of the victims were petitioner's cousins, and  
8 "[a]ll four were under 18 when [petitioner] began abusing them; the youngest was 10, another was  
9 12, and two were 14." *Id.* Petitioner was arrested after one girl told her mother, who called the  
10 police. In the course of investigation, the police discovered petitioner's other victims.

11 On April 29, 2010, petitioner pled guilty to eight counts in the amended complaint filed  
12 against him, for which the agreed maximum sentence was 13 years. *See* Respondent's Exhibit D  
13 ("RT") at 3-4. In light of the plea, the state moved to dismiss six other counts. *Id.* at 16.  
14 Petitioner pled guilty to: (i) Count 1, "a violation of [California Penal Code] 664 pursuant to  
15 288(c)(1), a felony, attempted lewd act on a child, occurring in August 2008"; (ii) Count 3, "a  
16 violation of 288(a), July 2003, lewd act on a child"; (iii) Count 5, "a violation of 288(a) pursuant  
17 to 664, December of 2003"; (iv) Count 7, "a violation of 243.4(a), sexual battery by restraint . . .  
18 on November 6, 2009"; (v) Count 9, "a violation of 314, subdivision 1, a misdemeanor, indecent  
19 exposure"; (vi) Count 11, "a violation of 288a(b)(1), oral copulation, occurring in 2002, May, with  
20 a minor"; (vii) Count 12, "a violation of 288a(b)(1) occurring in May 2004, oral copulation of a  
21 person under age 18"; and (viii) Count 13, "a violation of 647.6(a), a misdemeanor, child  
22 molesting, the violation occurring in August of 2009." *Id.* at 13-14. The state trial court referred  
23 the matter "for a 288.1 report" -- which appears to be a psychiatrist's report on petitioner's mental  
24 condition pursuant to California Penal Code § 288.1 -- and "to probation." *Id.* at 16.

25 On July 8, 2010, the state trial court called petitioner's case for sentencing. After stating  
26 that he had "had a chance to read and review the report and the associated documents, along  
27 with . . . a letter from Mr. Matuk's family," and permitting one of the victims to read a letter into  
28

1 the record, the state judge sentenced petitioner. Because this habeas petition is about petitioner's  
2 sentencing, the Court quotes the trial judge's statements in the transcript:

3 And I will deny probation. Probation is being denied for many  
4 reasons. There's the ineligibility statutorily and the limitation of  
5 probation being a possibility, being inappropriate in light of the  
seriousness of and nature of the charges, the victims' ages, and the  
length of time that the defendant's criminal behavior was carried on.

6 Instead, with respect to Count 5, . . . 288(a) of the Penal Code, I'm  
7 going to impose the upper term of eight years in state prison, upper  
term based upon the fact that the crime involved the defendant  
8 taking advantage of a position of trust or confidence to commit the  
offense.

9 With respect to a violation of 664/288(a), Count 1, one third the  
10 midterm of three years, or one year, in state prison consecutively  
imposed based upon the fact of the ages of the victims indicating  
11 they were particularly vulnerable.

12 Count 7, 243.4(a), I'll impose one third the midterm of one year,  
consecutively imposed based upon the fact that the crime involved  
13 great violence, great bodily harm, or the threat of the same.

14 As for Count 11, 288(b)(1), impose one third the midterm,  
consecutive, eight months, in state prison based upon the nature of  
15 and the seriousness of the crime.

16 Count 3, 288(a) pursuant to 664, one third the midterm, which  
17 would be four months, consecutively imposed based upon the fact  
that the defendant inflicted emotional injury.

18 And case -- or count number -- so the aggregate term is actually 11  
years, eight months' state prison.

19 RT at 26-27. The Court notes that the sentence imposed by the trial judge on this date actually  
20 added up to only 11 years.

21 On July 12, 2010, the court held a hearing to "clarify" the sentence and permitted another  
22 victim, Jane Doe Two, to address the court. *Id.* at 30. Among other things, she stated, "[i]t would  
23 weigh on me a lot [for petitioner] to do that many years in prison"; "11 years without their dad, I  
24 couldn't imagine how [petitioner's three young children] would feel"; and "please just have mercy  
25 on him." *Id.* at 30-31.

26 Stating that he was glad "we had a chance to consider" Jane Doe Two's comments as well  
27 as a letter submitted by Mr. Matuk's wife, the judge imposed this sentence:

Count	Sentence
3 - violation of 288(a)	8 years
5 - violation of 664/288(a)	1 year (consecutive)
7 - violation of 243.4(a)	1 year (consecutive)
11 - violation of 288a(b)(1)	8 months (consecutive)
12 - violation of 288a(b)(1)	8 months (presumably consecutive)
1 - violation of 664/288(c)(1)	4 months (presumably consecutive)
9 - violation of 314, subdivision 1	180 days (concurrent)
13 - violation of 647.6(a)	1 year (concurrent)
<b>TOTAL</b>	<b>11 years, 8 months</b>

See RT at 34-35.

In again imposing eight years for Count 3, the trial judge offered additional reasons:

I do note that this is a difficult, as pointed out by the People, situation. The crime itself was horrible. Mr. Matuk, I think, acknowledges that and took the affirmative steps to effect, I think, a resolution. Unfortunately, this crime is one of those that not only in and of itself by its very nature is difficult, but it also has remaining effects, as evidenced by Jane Doe Number Two, and I think those points need to be accepted at face value. But Jane Doe Number Two needs to understand that she's not the problem here; it's the behavior of the defendant, and, unfortunately, this kind of behavior causes that effect, and for that I feel even more firm about the appropriateness of the sentence previously announced.

*Id.* at 34.

Petitioner filed a direct appeal, and in a decision issued on October 24, 2011, the California Court of Appeal agreed with petitioner that the first reason given for the sentencing court's denial of probation -- petitioner's "statutory ineligibility" -- was "not supported by the record." 2011 WL 5040652, at \*2. The court of appeal ruled, however, that the trial court "had additional reasons for denying probation" which "were amply supported by the record," and that the court's "improper reliance on what it believed was defendant's statutory ineligibility was harmless." *Id.* at \*3. On petitioner's "suggest[ion that] the court may have relied on the probation report's unsupported statement that his conduct was violent," the court of appeal stated that it was "not persuaded," noting, without further elaboration, that "[t]he court's only mention of violence came

after it had denied probation, when it stated that it would impose one-third the mid-term of one year on the section 243.4, subdivision (a) count, ‘consecutively imposed based upon the fact that the crime involved great violence, great bodily harm, or the threat of the same.’’’ *Id.* at \*4. The court of appeal further found that petitioner’s argument that his sentence “violates [the] U.S. Constitution’s guarantee of due process of law” lacks merit because “it is founded on defendant’s unsupported assumption that the court based its decision to deny probation on findings that his ‘crimes were violent or that he is likely to endanger the public if not imprisoned . . . .’’’ *Id.* The court of appeal affirmed the judgment of the trial court in full. *Id.*

The California Supreme Court denied Matuk's petition for review on January 18, 2012, in a one-line denial. *See* Respondent's Exhibit C. The parties agree there is no issue of exhaustion for Matuk's petition for federal habeas relief, Dkt. No. 1, which is now pending before this Court.

## GOVERNING STANDARD

The Antiterrorism and Effective Death Penalty Act (“AEDPA”) governs federal habeas review and sets a very high bar for petitioners to cross. Under AEDPA, a federal court may not grant a habeas petition for any claim that was adjudicated on the merits in state court unless the state court’s adjudication of the claim resulted in (1) a decision that was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” or (2) a decision that was based on an “unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

For claims under Section 2254(d)(1), “a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts.” *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000). “[A]s the statutory language makes clear,” under Section 2254(d)(1), the “source of clearly established law” is restricted to the Supreme Court’s jurisprudence. *Id.* The “unreasonable application” language in Section 2254(d)(1) has been narrowly construed. Under controlling precedent, “an *unreasonable* application of federal law is different from an *incorrect* application of federal law.” *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (emphasis in original; quoting *Williams*, 529 U.S. at 410). If this

1 standard “is difficult to meet, that is because it was meant to be. As amended by AEDPA,  
2 § 2254(d) stops short of imposing a complete bar on federal court relitigation of claims already  
3 rejected in state proceedings.” *Id.* at 102.

4 For a state court’s factual findings, Section 2254(d)(2) “authorizes federal courts to grant  
5 habeas relief in cases where the state-court decision ‘was based on an unreasonable determination  
6 of the facts in light of the evidence presented in the State court proceeding.’” *Taylor v. Maddox*,  
7 366 F.3d 992, 999 (9th Cir. 2004). “Or, to put it conversely, a federal court may not second-guess  
8 a state court’s fact-finding process unless, after review of the state-court record, it determines that  
9 the state court was not merely wrong, but actually unreasonable.” *Id.* The same standard of  
10 unreasonableness applies under subsections (d)(1) and (d)(2) of Section 2254. *Torres v. Prunty*,  
11 223 F.3d 1103, 1107-08 (9th Cir. 2000). The standard under Section 2254(d)(2) is “a daunting  
12 standard -- one that will be satisfied in relatively few cases. Nevertheless, the standard is not  
13 impossible to meet.” *Taylor*, 366 F.3d at 1000; *see also Miller-El v. Cockrell*, 537 U.S. 322, 340  
14 (2003) (“Deference does not by definition preclude relief. A federal court can disagree with a  
15 state court’s credibility determination and, when guided by AEDPA, conclude the decision was  
16 unreasonable”).

## 17 DISCUSSION

18 The Court treats the California Court of Appeal’s decision as the pertinent state court  
19 determination because the California Supreme Court denied Matuk’s petition for review without  
20 citation or comment. *See Taylor*, 366 F.3d at 999 n.5; *see also Avila v. Galaza*, 297 F.3d 911, 918  
21 (9th Cir. 2002) (“In determining whether a state court decision is contrary to federal law, we look  
22 to the state’s last reasoned decision”). When the court of appeal adopts the reasoning of the trial  
23 court, the Court will also discuss the trial court’s decision. *Taylor*, 366 F.3d at 999 n.5.

24 At heart, the habeas petition here alleges a sentencing error by the state courts. As a  
25 general matter, challenges to state court sentences do not raise a federal constitutional question for  
26 federal habeas review. *See Lewis v. Jeffers*, 497 U.S. 764, 782-83 (1990). A federal habeas  
27 court’s review of a state sentence is quite properly circumscribed by the principles of comity and  
28 federalism, especially when the sentence is within the statutory range. *Cf. Dorszynski v. United*

1       *States*, 418 U.S. 424, 431-32 (1974) (“We begin with the general proposition that once it is  
2       determined that a sentence is within the limitations set forth in the statute under which it is  
3       imposed, appellate review is at an end.”).

4       But the respect accorded to state-court sentences is not a total proscription of review by  
5       this Court. A state criminal defendant has a protected right to due process at sentencing. *See, e.g.*,  
6       *Williams v. New York*, 337 U.S. 241, 250-51 (1949); *cf. Gardner v. Florida*, 430 U.S. 349, 358 n.9  
7       (1977) (due process applies at sentencing, but does not “implicate the entire panoply of criminal  
8       trial procedural rights”). That right to due process of law is violated when a criminal defendant is  
9       sentenced, whether “by carelessness or design,” on the basis of “misinformation,” a “misreading  
10       of the record” or “materially untrue” statements or assumptions. *Townsend v. Burke*, 334 U.S.  
11       736, 740-41 (1948); *see also United States v. Tucker*, 404 U.S. 443, 447-48 (1972) (resentencing  
12       of defendant required where answer to question “whether the sentence . . . might have been  
13       different if the sentencing judge had known that at least two of the respondent’s previous  
14       convictions had been unconstitutionally obtained . . . must be ‘yes’”).

15       This narrow window of review does not afford petitioner any relief on the bulk of his  
16       sentence. On the issue of statutory ineligibility for probation -- which the court of appeal clearly  
17       acknowledged was an error and which the trial court expressly stated as one of the numerous  
18       reasons probation was being denied -- the court of appeal found that “the [trial] court had  
19       additional reasons for denying probation: the seriousness and nature of the charges, the victims’  
20       ages, and the length of time defendant’s behavior was carried on.” 2011 WL 5040652, at \*2-3.  
21       The court of appeal found that these additional reasons were “amply supported by the record,”  
22       because, among other things, petitioner had, “[o]ver a seven-year period, . . . exposed his erect  
23       penis to his victims, masturbated in front of them, and demanded that they ‘jack him off’ and  
24       orally copulate him.” *Id.* The court of appeal consequently concluded that “the court’s improper  
25       reliance on what it believed was defendant’s statutory ineligibility was harmless.” *Id.* at \*3.

26       Petitioner does not seriously argue that these findings of the court of appeal were “based  
27       on an unreasonable determination of the facts” under 28 U.S.C. § 2254(d)(2), and the Court rejects  
28       such an argument in any event. Petitioner does attack the probation eligibility issue under 28

1 U.S.C. § 2254(d)(1), but this challenge, too, is denied. Petitioner relies almost entirely on *Tucker*,  
2 404 U.S. 443 (1972), but that reliance is misplaced. *Tucker* turned on misinformation that made a  
3 material difference in defendant's sentencing, as without it, "the factual circumstances of the  
4 respondent's background would have appeared in a dramatically different light at the sentencing  
5 proceeding." *Id.* at 448. That is not true here. The record shows, and the court of appeal correctly  
6 and reasonably concluded, that the acknowledged misinformation would not have made a  
7 difference to the sentencing judge. Neither *Tucker* nor any other United States Supreme Court  
8 case compels a different conclusion or stands for the proposition that a criminal defendant's due  
9 process rights are violated when the sentencing judge merely recites an incorrect basis for  
10 sentencing, when the judge in the same breath recites many other legitimate bases that can  
11 independently and sufficiently support the sentence imposed. The Court consequently denies any  
12 relief on the claim involving statutory ineligibility for probation.

13 Petitioner also argues to this Court, as he did to the state court of appeal, that his sentence  
14 should be vacated because "it is highly likely that, although not expressly cited, the sentencing  
15 court also relied on the probation report's baseless assertion that petitioner posed 'a serious danger  
16 to society.'" Dkt. No. 11 at 3. *See* Respondent's Exhibit A ("CT") at 111 ("The Defendant has  
17 engaged in violent conduct, which indicates a serious danger to society."). This argument, too,  
18 fails.

19 As petitioner concedes, the trial court did not even mention, let alone cite or rely on, this  
20 alleged error in the probation report in determining petitioner's sentence. For that very reason, the  
21 court of appeal rejected petitioner's prior identical argument on this issue. Petitioner had asserted  
22 on direct appeal that "there was 'a significant possibility' the [trial] court relied on the probation  
23 report's 'unsubstantiated conclusion' that he was likely to be a danger to others." 2011 WL  
24 5040652, at \*4. The court of appeal disagreed, finding that "[a]lthough the probation report listed  
25 danger to others as a factor in aggravation, it was not among the reasons the court gave for its  
26 decision." *Id.*

27 Petitioner does not meaningfully challenge this finding under Section 2254(d)(2) and the  
28 Court again would not have sustained such a claim in any event. The Court also finds that a

1 Section 2254(d)(1) claim fails for the same lack of evidence in the record. As the Court of  
2 Appeals for the Sixth Circuit has held, to find that a sentence violated federal due process because  
3 it was carelessly or deliberately pronounced on an extensive and materially false foundation, the  
4 petitioner “must show . . . that the trial judge relied upon” the allegedly false information. *United*  
5 *States v. Polselli*, 747 F.2d 356, 358 (6th Cir. 1984). The Court finds that petitioner has not, and  
6 cannot, make that showing, and consequently denies habeas relief for the alleged misstatement  
7 that petitioner posed “a serious danger to society” under either subdivision (d)(1) or (d)(2) of  
8 Section 2254.

9 These determinations leave most of petitioner’s sentence intact. The final alleged error in  
10 the probation report -- that it stated that defendant’s crime “involved great violence, great bodily  
11 harm, [or] threat of great bodily harm,” CT 110, when it did not -- is a different matter.

12 Although not crystal clear, the court of appeal appears to have found that the probation  
13 report was wrong on this point. *See, e.g.*, 2011 WL 5040652, at \*4. The record shows that at  
14 most, the victims complained that petitioner “grabbed” them, but even then, one victim made clear  
15 more than once that petitioner did not pull her hair, hurt her or rape her, and was not forceful. *See,*  
16 *e.g.*, CT 34-35, 39, 52. The court-ordered psychiatrist’s report stated, “I reviewed the Sheriff’s  
17 Department Incident Reports with Mr. Matuk. . . . These incidents did not involve violence,  
18 threats of violence, or force, according to the victims.” CT 126. The State of California, too, did  
19 not argue anywhere in its papers before this Court that petitioner’s crime involved violence, let  
20 alone “great” violence, and at the hearing, conceded that the sentencing court may have misspoken  
21 when it referred to the “great violence” of petitioner’s crime.

22 The court of appeal, however, took not just a wrong turn but an unreasonable one when it  
23 dismissed the impact of this factual error on petitioner’s sentence. The trial court quoted the exact  
24 words in the probation report at the sentencing: In imposing the sentence for Count 7, violation of  
25 California Penal Code Section 243.4(a), the trial court said, “I’ll impose one third the midterm of  
26 one year, consecutively imposed *based upon the fact that the crime involved great violence, great*  
27 *bodily harm, or the threat of the same.*” RT 26-27 (emphasis added). It is beyond cavil that the  
28 purported “great violence” of the crime was the only reason the court gave for its consecutive

1 imposition of one year as petitioner’s sentence for Count 7. And yet the court of appeal wrote,  
2 “[d]efendant suggests the court may have relied on the probation report’s unsupported statement  
3 that his conduct was violent. We are not persuaded.” 2011 WL 5040652, at \*4. The reason it  
4 gave for this conclusion was that the trial court “did not cite defendant’s crimes being ‘violent’ as  
5 a reason for denying probation. The court’s only mention of violence came *after* it had denied  
6 probation . . . .”<sup>1</sup>

7 If denial of probation were the only issue presented by petitioner’s sentencing, this might  
8 have made some sense. But it is not. Petitioner was sentenced to serve 11 years and 8 months in  
9 state prison, a year of which was imposed to run consecutively only because his crime allegedly  
10 “involved great violence, great bodily harm, or the threat of the same.” The court of appeal  
11 improperly elided the trial court’s reliance on violence with the question of probation, when the  
12 record clearly shows it was the reason why the trial court added one year in prison to petitioner’s  
13 sentence.

14 On this record, the Court can only conclude that the court of appeal engaged in an  
15 unreasonable construction of the record in finding that the trial court did not “rel[y] on the  
16 probation report’s unsupported statement that his conduct was violent.” 2011 WL 5040652, at \*4.  
17 The only reasonable construction is that the trial court *did* rely on that “unsupported statement” in  
18 imposing an additional year to petitioner’s sentence of imprisonment. On this issue, petitioner has  
19 stated a claim for habeas relief under Section 2254(d)(2).

20 Because petitioner has shown that he was sentenced on the basis of misinformation, the  
21 Court finds that his due process rights were violated under *Townsend v. Burke*, 334 U.S. 736, 740-  
22 41 (1948) and *United States v. Tucker*, 404 U.S. 443, 447-48 (1972), and the court of appeal’s  
23 rejection of petitioner’s due process claim also constitutes a violation under Section 2254(d)(1).  
24 And because petitioner’s due process rights were violated, the state’s main argument against

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25  
26 <sup>1</sup> It should be noted that where, as here, the petitioner “challenges the state court’s findings based  
27 entirely on the state record” without introducing any new evidence in federal court, “we must be  
28 particularly deferential to our state-court colleagues” in conducting this kind of “intrinsic review.”  
*Taylor*, 366 F.3d at 999-1000. The state court’s factual findings are not, however, “dressed in a  
presumption of correctness” under 28 U.S.C. Section 2254(e)(1) unless and until they have first  
“survive[d] this intrinsic review.” *Id.* at 1000.

1 habeas relief -- that “[s]tate sentencing error is not a basis for federal habeas relief unless the error  
2 was so arbitrary and capricious that it constitutes a separate due process or Eighth Amendment  
3 violation,” Dkt. No. 5-1 at 7 (citing *Richmond v. Lewis*, 506 U.S. 40, 50 (1992)) -- necessarily  
4 fails.

5 The Court also rejects the state’s harmless error argument made under *Brecht v.*  
6 *Abrahamsen*, 507 U.S. 619 (1993). *See* Dkt. No. 5. The Court does not find such an analysis to  
7 be appropriate, let alone necessary, in this situation. In *Townsend* and *Tucker*, the Supreme Court  
8 found due process violations where petitioner had shown that he had been sentenced on the basis  
9 of false information. The Supreme Court did not go on to ask if some other information might  
10 have supported the sentence imposed. Petitioner has shown that he was sentenced to an additional  
11 year in prison based on false information in violation of his due process rights, and that is enough  
12 for habeas relief. Harmless error is a useful tool for ensuring that justice is upheld despite  
13 occasional human mistakes, but there is nothing harmless in being sentenced to an extra year in  
14 prison on the basis of a false allegation of fact.

15 While stating a good claim for relief on this issue, petitioner overreaches by asking to  
16 vacate the entirety of his sentence and not just the additional year term. Nothing in the record  
17 shows that this material error corrupted his entire sentencing and no case law requires the Court to  
18 so presume. If anything, the record shows the opposite. While petitioner may have been surprised  
19 by his sentence and perceived it to be harsh, the undisputed facts of his crimes are serious and very  
20 troubling, and his tactic of preying on young girls repulsive. The sentencing judge was thoughtful  
21 and thorough, perhaps even unusually so, in explaining the basis for each component of his  
22 sentence, and there was more than enough in the record to support the sentencing judge’s  
23 statements for imposing the overall sentence that he did as well as for imposing every other part of  
24 petitioner’s sentence except for the sentence on Count 7.

## 25 CONCLUSION

26 The Court grants the habeas petition in part and denies it in part. The consecutive one-year  
27 sentence on Count 7 is vacated, and the case is remanded to the state trial court for resentencing  
28 consistent with this order.

1       The remainder of the habeas petition is denied, and the Court further denies a certificate of  
2 appealability pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases. Petitioner has  
3 failed to make a “substantial showing of the denial of a constitutional right” on any of his claims  
4 other than that for which the Court has granted relief. *See 28 U.S.C. § 2253(c)(2); see also Slack*  
5 *v. McDaniel*, 529 U.S. 473, 483-84 (2000) (explaining that an applicant satisfies this standard  
6 where he or she shows that reasonable jurists could find the issues debatable or that the issues are  
7 “adequate to deserve encouragement to proceed further”) (internal quotation omitted).

8       **IT IS SO ORDERED.**

9       Dated: June 29, 2015



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11       JAMES DONATO  
12       United States District Judge